

STATEMENT OF THE CASE

Danny Brooks appeals from the trial court's order revoking his probation. He presents the following issues for our review:

1. Whether the condition of his probation that he waived the right to challenge the admissibility of urinalysis test results at any probation hearing violates his constitutional right to confrontation.
2. Whether the State presented sufficient evidence that he violated the terms of his probation.
3. Whether he was denied his right to due process when the trial court rescinded his placement at Volunteers of America ("VOA").
4. Whether the trial court had discretion to order execution of less than the 900-day sentence.

We affirm.

FACTS AND PROCEDURAL HISTORY

On March 15, 2007, Brooks pleaded guilty to Theft, as a Class D felony. The plea agreement provided that Brooks' sentence would be three years, with one and a half years to be served in inpatient treatment at VOA and one and a half years suspended to probation. The terms of Brooks' probation included in relevant part: cooperation with his probation officer; no consumption of controlled substances or alcohol; and waiver of any objection to the admissibility of the results of alcohol or drug tests when put into evidence "at any Revocation Hearing." Appellant's App. at 49.

When Brooks reported to the VOA, the paperwork had not yet arrived from the trial court. By the time documentation was provided, the VOA did not have an available bed for Brooks and he was placed on a waiting list. In the meantime, the trial court ordered that Brooks begin serving his probation.

On August 20, 2007, the State filed a notice of probation violation alleging that Brooks had consumed cocaine and that he had not cooperated with his probation officer. During the evidentiary hearing, the State introduced into evidence a laboratory report showing that Brooks had tested positive for cocaine on August 9, 2007. Brooks objected to the report on the grounds of lack of foundation and hearsay. The trial court admitted the report over Brooks' objection. The trial court found that Brooks had violated the terms of probation when he consumed cocaine, and the court ordered that Brooks' probation be revoked. The trial court ordered Brooks to serve 900 days in the Indiana Department of Correction. This appeal ensued.

DISCUSSION AND DECISION

Issue One: Admissibility of Lab Report

Brooks first contends that the term of his probation barring any objection to the admissibility of urinalysis reports at probation revocation hearings violates his constitutional right under the Confrontation Clause. Brooks does not challenge the terms of his probation regarding random drug testing, drug treatment, or reasonable searches of his person or property, which he agrees are reasonably related to his rehabilitation. But Brooks asserts that ordering him to waive his constitutional right to confrontation is not reasonably related to his rehabilitation and is unenforceable. We cannot agree.

A trial court enjoys broad discretion when determining the appropriate conditions of probation. Stott v. State, 822 N.E.2d 176, 179 (Ind. Ct. App. 2005), trans. denied. This discretion is limited only by the principle that the conditions imposed must be reasonably related to the treatment of the defendant and the protection of public safety.

Id. at 179-80. Where, as here, the defendant challenges a probationary condition on the basis that it is unduly intrusive on a constitutional right, we will evaluate that claim by balancing the following factors: (1) the purpose to be served by probation, (2) the extent to which constitutional rights enjoyed by law-abiding citizens should be enjoyed by probationers, and (3) the legitimate needs of law enforcement. Id. at 180.

In support of his contention on this issue, Brooks cites to Patton v. State, 580 N.E.2d 693 (Ind. Ct. App. 1991), trans. denied. In Patton, this court agreed with the defendant that the trial court could not impose a probation condition forcing the defendant to waive his right to object to the admissibility of polygraph examination results at “any subsequent court proceeding.” Id. at 699. We observed that polygraph examination results are generally inadmissible “because they have not been proven to be sufficiently accurate to provide a foundation for their admissibility into evidence[.]” Id. at 698-99. And we held that “it is inappropriate for a trial court to coerce a defendant to agree to the admissibility of evidence that otherwise would be inadmissible because it has not been found scientifically reliable.” Id. at 699.

In Carswell v. State, 721 N.E.2d 1255 (Ind. Ct. App. 1999), we reiterated our holding in Patton and held that that portion of a probation condition requiring waiver of objection to the admissibility of polygraph examination results in any subsequent court proceeding should be stricken. Id. at 1266. But we also held that it is proper for a defendant to waive his right to object to the admissibility of polygraph examination results at a subsequent probation revocation hearing. Id.

Here, urinalysis test results are at issue. Brooks makes no contention that the test results are inherently unreliable like polygraph examination results have been shown to be. Indeed, Brooks' own testimony strongly implies that he abused drugs while on probation. And the trial court admitted the test results in the course of the probation revocation hearing, not a subsequent court proceeding. As such, our holdings in Patton and Carswell do not support Brooks' contention on this issue. We cannot say that the condition of probation Brooks challenges here unduly infringes upon his right to confrontation. During the probation revocation hearing, the evidence, including Brooks' own testimony, showed that Brooks continues to suffer from a substance abuse problem. We hold that requiring Brooks to waive any objection to the admissibility of urinalysis test results at probation revocation hearings is reasonably related to his rehabilitation. The trial court did not abuse its discretion when it admitted into evidence the report showing that Brooks had consumed cocaine.

Issue Two: Sufficiency of the Evidence

Brooks also contends that the State presented insufficient evidence to support the revocation of his probation. Probation is a matter of grace, and whether probation is granted is within the trial court's discretion. Morgan v. State, 691 N.E.2d 466, 468 (Ind. Ct. App. 1998). The sole question at a probation revocation hearing is whether the probationer should be allowed to remain conditionally free or rather should be required to serve the previously imposed sentence in prison. Id. It is well settled that violation of a single condition of probation is sufficient to revoke probation. Wilson v. State, 708 N.E.2d 32, 34 (Ind. Ct. App. 1999). If the court finds the defendant has violated a

condition of his probation at any time before the termination of the probationary period, and the petition to revoke is filed within the probationary period, then the court may order execution of the sentence that had been suspended. Wilburn v. State, 671 N.E.2d 143, 147 (Ind. Ct. App. 1996), trans. denied.

Here, the State presented the results of Brooks' urinalysis test showing that he consumed cocaine on August 9, 2007, while he was on probation. That test, without more, is sufficient to support the trial court's revocation of his probation. Brooks merely asks that we reweigh the evidence, which we will not do.¹

Issue Three: Due Process

Brooks next contends that his right to due process was violated when, "without any notice whatsoever, the trial court rescinded [his] VOA placement at the same time it revoked [his] probation." Brief of Appellant at 20. Brooks maintains that while he was on notice of a possible 545-day commitment to the Department of Correction, he was not on notice that he faced the 900-day commitment imposed by the trial court. We cannot agree.

Brooks' plea agreement provides that he would serve 545 days at VOA and 545 days suspended to probation. And the plea agreement further provides that "UPON ANY VIOLATION DEFENDANT WILL SERVE FULL BACK UP." Appellant's App. at 45. While the circumstances of this case are unusual in that Brooks began his probation before his commitment to VOA, the fact remains that he committed a violation of his

¹ It is well settled that the violation of a single condition of probation is sufficient to support the revocation of probation. Wilson v. State, 708 N.E.2d 32, 34 (Ind. Ct. App. 1999). Thus, we need not address Brooks' contention that the evidence was insufficient to show that he failed to cooperate with his probation officer.

probation. Because of that violation, under the plea agreement Brooks was to serve “full back up,” meaning that he was to serve the remainder of his sentence at DOC.

While Brooks is correct that our holding in Million v. State, 646 N.E.2d 998 (Ind. Ct. App. 1995), sets out certain due process requirements before revoking placement in a community corrections program, that holding is inapposite here. Brooks had not yet been placed at VOA, but was on probation at the time of his violation. As such, the State properly filed a notice of probation violation and the trial court held a hearing. Indeed, Brooks makes no contention that his right to due process was violated in the context of the probation violation. We agree with the State that “because of the nature of his agreement that called for any violation to lead to an executed sentence, Brooks’ due process rights for his community corrections placement were met and subsumed within the probation revocation.” Brief of Appellee at 16. We hold that in light of the terms of Brooks’ plea agreement, no separate notice regarding revocation of the VOA placement was required here. The trial court properly revoked Brooks’ probation and ordered him to serve the remainder of his sentence at DOC.

Issue Four: Sentence

Finally, Brooks contends that the trial court erred when it concluded that it could not impose less than the 900-day sentence under the terms of the plea agreement. Brooks asserts that “once the trial court determined that Brooks had violated the terms of his probation, it had the discretion to, in effect, disregard the terms of the original plea agreement.” Brief of Appellant at 23. We cannot agree.

In support of his contention, Brooks cites to Indiana Code Section 35-38-2-3(g), which provides:

If the court finds that the person has violated a condition [of probation] at any time before termination of the period, and the petition to revoke is filed with the probationary period, the court may:

- (1) continue the person on probation, with or without modifying or enlarging the conditions;
- (2) extend the person's probationary period for not more than one year beyond the original probationary period; or
- (3) order execution of all or part of the sentence that was suspended at the time of initial sentencing.

And Brooks cites to our opinion in Abernathy v. State, 852 N.E.2d 1016 (Ind. Ct. App. 2006), where we addressed the issue of whether the trial court violated the terms of the defendant's plea agreement when, following the revocation of defendant's probation, the court imposed a sentence that exceeded the cap included in the plea agreement. We held that "[t]he mere fact that Abernathy had a plea agreement which controlled at the time of initial sentencing in no way modified the trial court's statutory authority under Ind. Code § 35-38-2-3(g)(3) to order execution of a suspended sentence following a probation violation." Id. at 1021.

But the circumstances of Brooks' plea agreement are such that Abernathy and the other cases Brooks relies upon are inapposite. Brooks' plea agreement did not call for a sentencing cap. Instead, the plea agreement, which the trial court accepted, required that Brooks would serve the remainder of his sentence at DOC upon "any violation." Plea agreements are contracts which are entered into between the State and the defendant and are binding upon both parties when accepted by the trial court. Baker v. State, 768

N.E.2d 477, 481 (Ind. Ct. App. 2002). Once a trial court accepts a plea agreement, it is bound by its terms. Id. Here, under the plain terms of the plea agreement, the trial court did not have discretion to impose less than “full back up” in sentencing Brooks.

Affirmed.

DARDEN, J., and BROWN, J., concur.